

BACKGROUND

No. 2667 | MARCH 19, 2012

The Employee Rights Act Empowers Workers

James Sherk

Abstract

Labor unions should serve the interest of employees—not the other way around, as often happens. Legislation introduced in Congress would go a long way toward making this a reality. The Employee Rights Act guarantees workers a private, informed, uncoerced vote on unionizing. The bill also enables employees to re-elect (or unelect) their bargaining representatives every three years. The Employee Rights Act further protects workers from union pressure and extortion. It requires unions to obtain workers' permission before spending their dues on matters unrelated to collective bargaining. It also gives employees the right to vote on accepting a contract or before going on strike. These reforms would shift the balance of power in the workplace from unions to workers.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2667>

Produced by the Center for Data Analysis

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Labor unions have institutional objectives: to expand their size, income, and influence. Unions want more dues-paying members—whether they improve working conditions or not. Unions also want contracts that protect their institutional powers. These objectives often conflict with the desires of workers. Employees may want a different contract, or they may not want to join a union at all. When these interests clash, the law gives unions substantial powers over employees:

- Employees do not have the right to a secret-ballot vote on joining a union.
- Unions do not stand for re-election as employees' representatives.
- Employees have little say over how their dues are spent.
- The union—not employees—decides whether workers go on strike.
- Unions can force employees to accept a contract.
- Unions can legally pressure and intimidate employees whose views they oppose.

TALKING POINTS

- The institutional objectives of unions and the desires of workers often conflict. Unions want more dues-paying members—whether the unions improve working conditions or not.
- Federal law gives unions substantial power over employees when their interests clash. The proposed Employee Rights Act would rebalance labor law to favor employees in those situations.
- The Employee Rights Act guarantees workers a private, informed, noncoerced vote on joining a union. It also requires unions to stand for regular elections as employees' bargaining representative.
- The legislation gives employees the right to vote on accepting new contracts, and whether to go on strike. Currently, unions decide whether or not employees can vote on these subjects.
- The Employee Rights Act requires unions to obtain employees' permission before spending their money on matters unrelated to collective bargaining.

Unions should serve employees' interests, not the other way around. Legislation introduced in Congress would go a long way toward making this happen. The Employee Rights Act¹ guarantees workers a private, informed, uncoerced vote on unionizing. The bill also enables employees to vote on re-electing their bargaining representatives every three years.

The Employee Rights Act further protects workers from union pressure and extortion. It requires unions to get workers' permission to spend their dues on matters unrelated to collective bargaining. It also gives employees the right to vote on accepting a contract or before going on strike. These reforms would shift the balance of power in the workplace from unions to workers.

Protecting Secret Ballots

Unions traditionally organize through secret-ballot elections; however, they are not required by law. A company can legally recognize a union on the basis of publicly signed union cards—so-called card-check recognition. Researchers estimate that unions organize as many as one-quarter of their new members without a private vote.²

Card-check exposes workers to harassment and pressure by making their choice public information. Card-check tells union organizers

exactly who supports them and who does not. They take full advantage of this knowledge, returning again and again to the homes of unsupportive employees. With card-check, “no” only means “not yet.”³

Some unions even threaten reluctant workers. During a card-check campaign at the MGM Grand in Las Vegas, union organizers threatened that they would make sure that workers who did not sign were fired once the union was recognized.⁴

The Employee Rights Act shields workers from such pressure. It requires unions to win a secret-ballot election before they can begin collective bargaining. Publicly signed cards would not count. Seventy-eight percent of union members agree that workers should have the right to a secret-ballot election before joining a union.⁵ Workers should not have to reveal their vote to anyone.

Informed Vote

Workers should also be able to cast an informed vote. Union organizers are like paid salesmen. Their job is to recruit dues-paying members, not to impartially advise workers about the costs and benefits of organizing. Unions train their organizers to deflect uncomfortable topics like strike histories and dues increases.⁶ Employers tell workers the other side of the story. Workers

cast an informed vote after hearing both sides make their strongest case.

Unions, however, do not want workers to cast an informed vote. They want workers to become dues-paying union members—whether unionizing benefits them or not. President Obama's appointees to the National Labor Relations Board (NLRB) have shortened the union election period to as little as 14 days. This means that union organizers will have months to make their case, but employers will have only a few days to respond.

UNIONS WANT WORKERS TO BECOME DUES-PAYING MEMBERS—WHETHER UNIONIZING BENEFITS THEM OR NOT.

Snap elections make life much easier for union organizers, but they hurt employees. If a union cannot make its case with workers being informed about both sides, employees are probably better off without it. The Employee Rights Act guarantees employees 40 days to weigh the pros and cons of unionizing before voting. Over 80 percent of union members support this proposal.⁷ Workers should not be rushed into deciding.

Union Re-elections

The vast majority of union members started working for their

-
1. S. 1507, H.R. 2810.
 2. Rafael Gely and Timothy Chandler, “Card Check Recognition: New House Rules for Union Organizing,” *Fordham Urban Law Journal*, Vol. 35 (2008), p. 247.
 3. Testimony of Ron Kipling, Director of Room Operations, New Ontani Hotel and Garden, Los Angeles, before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, July 23, 2002.
 4. Testimony of Bruce Esgar, employee, MGM Grand Hotel, Las Vegas, before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, July 23, 2002.
 5. Poll of 3,021 adults conducted by CARAVAN Surveys between August 5-7 and August 11-15, 2011: “Poll of Union Members Regarding the Employee Rights Act,” at <http://www.employeeightsact.com/poll.html> (March 16, 2012).
 6. Testimony of Jen Jason, former organizer, UNITE-HERE, before the Subcommittee on Health, Employment, Labor, and Pensions, Committee on Education and Labor, U.S. House of Representatives, February 8, 2007.
 7. Poll of 3,021 adults conducted by CARAVAN Surveys.

company after it unionized. Only 7 percent of private-sector union members voted for the union that now represents them.⁸ The United Auto Workers (UAW), for example, organized General Motors in 1937. Hardly any of General Motors' current employees voted for the UAW.

Workers who are extremely dissatisfied with their union may file for a decertification election. However, unions and the NLRB make calling for such elections very difficult. Workers who want to decertify their union must first resign their union membership—otherwise their union can fine them for violating the union's constitution.⁹ Giving up union membership means that workers cannot vote in elections for union officers or vote on ratifying new contracts.

The NLRB only allows employees to file for an election during a one-month window every three years. To do so, they must collect signatures from at least 30 percent of workers represented by the union. Those signatures may not be collected on work time or in work areas.¹⁰ Unions often harass and pressure workers

who collect signatures. Consequently, decertification elections are rare. In 2009, only 0.2 percent of union members had the opportunity to vote on whether to remain unionized.¹¹

Democracy does not mean one man, one vote, once. Politicians must run for *re*-election, keeping them accountable. Unions should be similarly accountable to employees. Fully 83 percent of union members believe that employees should have the right to vote regularly on whether they want their current union to continue to represent them.¹²

The Employee Rights Act gives them that right. Under the bill, workers would vote on whether to reelect their union as their bargaining representative every three years.¹³ Satisfied union members could vote for their union again and again. Dissatisfied workers could vote against them in the privacy of the voting booth. Union re-election votes would put employees in the driver's seat.

Protection from Intimidation

Under the National Labor Relations Act, employers cannot

“interfere with, restrain, or coerce employees” when they exercise their rights under the act.¹⁴ However, the law only states that unions cannot “restrain or coerce”¹⁵—legally, unions can interfere with employees when they exercise their rights under the act. This allows unions to pressure workers to fall in line. For example, workers have a statutory right to reject a union's representation. They can choose another union to represent them or choose to become non-union. But unions often pressure and harass workers who attempt to remove them as their representative. Virtually every union constitution punishes members who support decertification.¹⁶

The Employee Rights Act closes this loophole. It prevents unions from interfering with employees' statutory rights. Seventy-one percent of union members support this proposal.¹⁷

Secret-Ballot Vote on Strikes

When employees go on strike, they lose their pay and benefits. Union “strike pay” replaces only a small fraction of workers' previous

8. J. Justin Wilson, “Job Tenure and Union Elections: Non-Voting Union Membership in the Private Sector, 1964 to 2009,” The Center for Union Facts, March 2012, at http://www.unionfacts.com/downloads/Union_Tenure_Elections.pdf (March 16, 2012).
9. For example, Article XIX, Section 7(b) of the constitution of the International Brotherhood of Teamsters prohibits union members from fostering “secession.” International Brotherhood of Teamsters, “Constitution: Adopted by the 27th International Convention, June 26–30, 2006,” at http://www.teamster.org/sites/teamster.org/files/constitution_June2006.pdf (March 16, 2012).
10. National Right to Work Legal Defense Foundation, “Decertification Election,” *Issue Briefing Paper*, at <http://www.nrtw.org/decertification-election> (March 16, 2012).
11. Heritage Foundation calculations using data from the National Labor Relations Board 2009 annual report, Table 13-D, and Barry T. Hirsch and David A. Macpherson, “Union Membership and Coverage Database from the CPS,” Unionstats.com, at <http://www.unionstats.com> (March 16, 2012). The NLRB reports that 16,000 workers were eligible to vote in decertification elections in 2009. Unions represented 8.2 million private-sector workers that year, of whom 7.8 million worked in industries covered by the National Labor Relations Act.
12. Poll of 3,021 adults conducted by CARAVAN Surveys.
13. These elections would be conducted via secret ballot.
14. National Labor Relations Act, Section 8(a)(1).
15. National Labor Relations Act, Section 8(b)(1).
16. See for example Article XIX, Section 7(b) of the constitution of the International Brotherhood of Teamsters, or Article XXXI, Section 24 of the constitution of the United Automobile, Aerospace, and Agricultural Implement Workers of America.
17. Poll of 3,021 adults conducted by CARAVAN Surveys.

paychecks. Strikes sometimes result in higher pay. They can also result in financial hardship and no gain.

Federal law does not require unions to let employees vote before taking these risks. Unions decide how to call for a strike. Some union constitutions allow workers to vote on the topic. Others leave the final decision in the hands of union officers. The law does not guarantee employees the right to vote before their union calls a strike.

In 1997, the Teamsters asked their members to authorize a strike if negotiations with UPS broke down. The union members voted overwhelmingly to do so—voting “no” would have crippled the union’s bargaining leverage. When negotiations hit an impasse, the Teamsters ordered their members to strike. They did not allow them to vote on UPS’s final offer. Workers who thought the final offer was fair were nonetheless ordered on the picket lines. When one employee, Steven Beard, told CNN that he objected to not having a vote on the matter, the Teamsters fined him \$10,000 for speaking out.¹⁸

Polling shows that 88 percent of union members believe they should have the right to vote on whether they should strike.¹⁹ The Employee Rights Act gives them that right. It

provides, “No strike shall commence without the consent of a majority of all employees affected, determined by a secret ballot vote.”²⁰ The act also lets workers vote—in privacy—on whether to accept the employer’s final offer. Employees—not union officials—should decide if they want to go on strike.

Secret-Ballot Vote on Contracts

Many workers believe they already have the right to vote on the contracts that their union negotiates. They do not. Nothing in federal law states that workers may vote on new contracts. Unions can call for a vote, and many do. However unions can also negotiate a bad contract and impose it on employees.

EMPLOYEES—NOT UNION OFFICIALS—SHOULD DECIDE IF THEY WANT TO GO ON STRIKE.

In states without right-to-work laws, unions want companies to promise to fire employees who do not pay union dues. Many companies agree to do this in exchange for concessions elsewhere. In fact, many union contracts at newly organized companies do not raise workers’ wages.²¹ Employees might not want

a contract that freezes their pay and forces them to pay union dues. The union can legally force them to accept it anyway. Workers vote on a contract only if the union lets them.

The Employee Rights Act gives employees a statutory right to vote on their contract in a secret-ballot vote. Unions should not be able to force workers to accept contracts that place the union’s interests ahead of employees.

Paycheck Protection

Most union members object to their union’s political spending. Legally, this does not matter. Union officials spend dues on politics anyway. In 2010, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) devoted one-sixth of its national budget to politics and lobbying.²² Fully 60 percent of union members object to their dues being spent in this manner.²³

Under the Supreme Court precedent established in *Communications Workers v. Beck* in 1988, unions cannot force workers to donate to political causes. However, unions make it very difficult to exercise this right. Unions implement bureaucratic obstacles, such as accepting such requests only 30 days of the year, that make it difficult for workers to

18. Ilana DeBare, “Teamsters Fine UPS Worker,” *The San Francisco Chronicle*, February 26, 1998, at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/1998/02/26/BU99480.DTL> (March 16, 2012).

19. Poll of 3,021 adults conducted by CARAVAN Surveys.

20. Employee Rights Act, Section 3(d).

21. Robert J. Lalonde, Gerard Marschke, and Kenneth Troske, “Using Longitudinal Data on Establishments to Analyze the Effects of Union Organizing Campaigns in the United States,” *Annales d’Economie et de Statistique*, Vol. 41-42 (1996), pp. 155-185; Richard B. Freeman and Morris M. Kleiner, “The Impact of New Unionization on Wages and Working Conditions,” *Journal of Labor Economics*, Vol. 8, No. 1 (January 1990), pp. S8-25; and John DiNardo and David S. Lee, “Economic Impacts of New Unionization on Private Sector Employers: 1984-2001,” *The Quarterly Journal of Economics*, Vol. 119, No. 4 (November 2004), pp. 1383-1441.

22. U.S. Department of Labor, Office of Labor-Management Standards (OLMS), Form LM-2 Labor Union Annual Report, American Federation of Labor-Congress of Industrial Organizations, 2010, File No. 000-106, at <http://www.unionreports.gov> (March 16, 2012).

23. WordDoctors, “Benchmark Study of Union Employee Election Year Attitudes,” Question 41, October 2010. Survey of 760 union members.

formally request a refund of their dues. Often unions refuse to honor those requests unless workers file federal charges.²⁴

The Laborers' International Union of North America (LIUNA) simply refused to give Kimberly Wright—a hospital employee in West Virginia—a refund on the portion of her dues they spent on politics. She has twice filed charges with the NLRB to stop LIUNA's spending part of her dues on politics.²⁵ Many employees do not want their dues spent electing politicians but also do not want a protracted legal battle.

The law should empower employees, not union bosses. Workers should not have to jump through hoops to exercise their constitutional rights.

The Employee Rights Act includes "paycheck protection." It requires unions to obtain employees' permission before spending dues for purposes—like political activism—unrelated to collective bargaining. Employees would be free to support these activities, but the union would have to get their permission first. Union members support this proposal by a 4-to-1 margin.²⁶ Employees believe that unions should get their permission before spending their dues on non-union causes.

Prohibiting Union Extortion

U.S. attorneys recently charged the president of Operating Engineers Local 17 in Buffalo, New York, and nine other union officials with extortion.²⁷ The government alleges that the construction union used threats and violence to prevent employees from hiring non-union workers. Among other charges, union members allegedly:

- Stabbed the president of a company hiring non-union workers in the neck;
- Poured sand into the engines of construction vehicles operated by non-union employees;
- Threatened to kill an employee of a non-union construction company;
- Attempted to run an employee of a non-union company off the road; and
- Threatened to sexually assault the wife of a representative of a company hiring non-union workers.

These tactics allegedly intimidated several employers into replacing non-union employees with Local 17 members.²⁸

The union's lawyers asked the court to dismiss the case, arguing that federal law allows unions to commit extortionate activities when pursuing their economic objectives. Brian Melber, one of the defense lawyers, stated that "union members and union leaders should not be charged with extortion when they're trying to get employees a collective-bargaining agreement."²⁹ The AFL-CIO requested to file an amicus brief making the same point.³⁰ The court declined to dismiss the case outright, but the AFL-CIO was not blowing smoke. The Supreme Court has ruled that the Hobbs Act, which outlaws extortion, does not apply to unions pursuing "legitimate" objectives.³¹ An appeals court may well overturn any convictions.

THE LAW SHOULD EMPOWER EMPLOYEES, NOT UNION BOSSES. WORKERS SHOULD NOT HAVE TO JUMP THROUGH HOOPS TO EXERCISE THEIR CONSTITUTIONAL RIGHTS.

Union membership should be voluntary. If employees do not want to organize, the law should not allow unions to threaten employees or their families. Nor should the law let unions attack the livelihood of non-union workers.

24. Robert P. Hunter, "Paycheck Protection in Michigan," The Mackinac Center for Public Policy, September 1998, pp. 6-7, at <http://www.mackinac.org/archives/1998/s1998-05.pdf> (March 16, 2012). See also, News release, "Public Employee Union Faces Federal Lawsuit for Illegal Forced Dues Scheme," National Right to Work Legal Defense Foundation, March 6, 2012, at <http://www.nrtw.org/en/press/2012/03/AFSCME-EBMUD-lawsuit-03062012> (March 16, 2012).

25. News release, "WVU Hospital Employee Files Federal Charge After Union Ignores Her Rights," National Right to Work Legal Defense Foundation, November 23, 2011, at <http://www.nrtw.org/en/press/2011/11/wvu-hospital-employee-files-federal-charges-11232011> (March 16, 2012).

26. Poll of 3,021 adults conducted by CARAVAN Surveys.

27. Second Superseding Indictment, *United States v. Larson*, No. 1:07-CR-00304 (W.D.N.Y. January 10, 2012).

28. *Ibid.*

29. Phil Fairbanks, "Limitations on Violence Under Law Tested Anew," *The Buffalo News*, September 20, 2011, at <http://www.buffalonews.com/city/police-courts/courts/article563253.ece> (March 16, 2012).

30. The AFL-CIO's request to file an amicus brief was denied, largely because it was filed well after the court had considered the briefs filed by the other parties.

31. *United States v. Enmons*, 410 U.S. 396 (1973).

The Employee Rights Act removes this loophole. It expressly prohibits using threats or violence to unionize employees or extract concessions from employers. It further clarifies that anti-extortion laws prohibit union threats and violence, no matter how legitimate the union's objective.

Over 90 percent of Americans agree that “employees should have the right to be free from violence, coercion, intimidation, and threats from union leaders attempting to unionize employees.”³²

Conclusion

The interests of unions and employees often conflict, and when they do, the law gives unions considerable power over workers. The

Employee Rights Act would return that power to employees. The act guarantees employees the right to cast an informed vote in a secret-ballot election before unionizing. It holds unions accountable to their members by requiring them to regularly stand for re-election. It prevents unions from spending dues on causes to which their members object. It gives workers the right to vote on the contract that their union has negotiated, and to vote before going on strike. It protects employees from union violence and coercion. The Employee Rights Act rebalances labor law to favor workers.

—**James Sherk** is Senior Policy Analyst in Labor Economics in the Center for Data Analysis at The Heritage Foundation.

32. Poll of 3,021 adults conducted by CARAVAN Surveys.